

LILLIE BELLE HIGGINS

IBLA 77-350

Decided December 8, 1978

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, holding that appellant's oil and gas lease W-18309-A terminated for failure to pay rental timely and denying her petition for reinstatement.

Reversed and remanded.

1. Accounts: Payments—Oil and Gas Leases: Rentals—Oil and Gas Leases:
Termination—Payments: Generally— Words and Phrases

"Reasonable diligence." Where an oil and gas rental check bearing the due date of the lease is submitted a few days in advance thereof, but the check is returned by the Bureau of Land Management and thereupon a new check is promptly submitted, even if it could be considered that the lease had terminated, it would be eligible for reinstatement under 30 U.S.C. § 188(c) (1976) because there has been reasonable diligence on the part of lessee.

APPEARANCES: Lillie Belle Higgins, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Lillie Belle Higgins brings this appeal from a decision of the Wyoming State Office, Bureau of Land Management (BLM), holding appellant's noncompetitive oil and gas lease (W-18309-A) to have terminated for failure of the lessee to make timely payment of rental. The decision further denied appellant's request for reinstatement of the lease.

Appellant's contention in her statement of reasons for appeal is that her check in payment of the advance rental for the lease was received by BLM prior to the due date. Hence, appellant alleges that timely payment of the lease rental was made in the first instance.

The anniversary date of the lease was May 1, 1977. As the date fell on a Sunday, the annual rental payment was required to be received by BLM by close of business on May 2, 1977, in order to be considered timely and preclude automatic termination of the lease. 30 U.S.C. § 188(b) (1976). The BLM decision recites that appellant's check for the rental was received on April 25, 1977. The check received on that date, however, was dated May 1, 1977.

The postdated check was returned to appellant by notice dated April 28, 1977. Section 1372.32B of the BLM Manual, covering collections, states that a postdated check does not constitute acceptable payment. Appellant promptly submitted a second check in payment of the rental, which was received by BLM on May 4, 1977. The envelope was postmarked April 30, 1977.

The second check was accompanied by a request that the payment be considered timely in view of the fact that the initial check had been submitted prior to the anniversary date. BLM in its decision held that the postdated check was not acceptable payment and that, the lease terminated when no acceptable payment of the rent was received by the anniversary date. BLM treated the request which accompanied the late payment as a petition for reinstatement of the lease under 30 U.S.C. § 188(c) (1976). The petition for reinstatement was denied on the ground that appellant had not established the late payment was either justifiable or not due to a lack of reasonable diligence, which decision is the subject of this appeal.

[1] Either the lease terminated and should be reinstated under section 188(c), or it did not terminate. It can be argued that the lease did not terminate, appellant having submitted a "check" under 43 CFR 3103.1-1, 1/ according to the ordinary meaning of the term "check." See State v. DeNicola, 126 N.E.2d 62, 66, 163 Ohio St. 140 (1955). There is no regulation clearly prohibiting submission of a check dated on the due date and submitted a short period in advance thereof. See, e.g., A. M. Shaffer, 73 I.D. 293, 298 (1966). Further, BLM Manual § 1372.32B could be interpreted as intended to apply only to checks postdated beyond the date on which payment is due. Had the check been deposited by BLM for collection with the next day's receipts on Friday, April 29, the check would not have reached the drawee bank until May 1. Under H. E. Stuckenhoff, 67 I.D. 285, 287 (1960), if the check was improperly returned, the lease should not have been terminated. On the other hand, it could also be argued that under 43 CFR 3103.1-1, appellant did not timely submit a "check" within the ambit of U.C.C. § 3-104, and Anderson, Uniform Commercial

1/ Section 3103.1-1 provides:

"§ 3103.1-1 Payments

"§ 3103.1-1 [sic] Form of remittance.

Cash, money order, check, certified check, bank draft, and bank cashier's check."

Code, § 3-114:9 (2d ed. 1971). A postdated check is, however, also referred to as a "check" throughout the U.C.C. and Anderson. 2/ In any event, appellant's second check was received in time to qualify the lease for reinstatement. There being no clear regulation prohibiting her course of action, appellant has manifested reasonable diligence under the circumstances, especially in view of the timely submission of the first check but a few days before the date thereof, and the most prompt submission of a second check.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded for appropriate action.

Joseph W. Goss
Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

2/ In 2 Anderson 692, for example, a postdated check is discussed as follows:

"B. POSTDATING OF CHECKS

* * * * *

"The postdating of a check does not affect its negotiability under the Code. * * * As long as there is no illegality or fraud, non-Code law sustains the validity or propriety of such a check." (Emphasis added.)

ADMINISTRATIVE JUDGE FISHMAN DISSENTING:

The seminal question is whether a check dated May 1, 1977, received by BLM on April 25, 1977, in payment for rental due no later than May 2, 1977, constitutes proper payment.

The main opinion strongly suggests that it does. I disagree on the basis of Richard v. Bowman, 19 IBLA 261, 264-5 (1975), reciting:

Under "Negotiable Instruments," BLACK'S LAW DICTIONARY 1187, 1188 (Rev. 4th ed. 1968), says, in pertinent part:

Under the Uniform Negotiable Instruments Act, an instrument, to be negotiable, must be in writing and signed; must contain an unconditional promise or order to pay a certain sum of money on demand, or at a fixed and determinable future time; * * *.

The Uniform Commercial Code, Anderson (2d ed. 1971), § 3-104, has the same provision. "In form and contents checks are in many respects like bills of exchange, as each is for a specific sum payable in money and, in both cases, there is a drawer, a drawee, and payee. The two chief characteristics of checks are that they are drawn, on a bank, and that they are payable instantly on demand." (Emphasis added). 10 C.J.S. Bills and Notes § 5.b.(2). "The essence of the dual character of a check as a bill of exchange lies in the fact that it is an unconditional order in writing to pay a sum certain in money on demand, and an instrument having a drawer, a drawee, and a payee. * * * checks * * * are payable instantly on demand * * *." (Emphasis added). 11 Am. Jur. 2d, Bills and Notes § 18.

Thus, as we can see from the authorities cited above, in order to prevent automatic termination of an oil and gas lease, rental must be tendered on or before the due date in the form of a negotiable check.

Indeed administrative convenience dictates the nonacceptance of postdated checks. Otherwise the State Office would have the burden of keeping checks until their dates occurred. See BLM Manual, § 1372.32B, precluding the acceptance of postdated checks. The main opinion seeks to exculpate appellant indicating that, given the normal delays in transmittal of a check for collection, it is not clear that appellant's check if deposited by the BLM would have been dishonored by the drawer's bank when presented for payment.

That is beside the point – BLM should not have to run the risk of dealing with checks returned because they are postdated. But the second check, postmarked April 30, 1977, and received by BLM on May 4, 1977, cannot be regarded as warranting reinstatement, since presumably it was mailed 2 days before the due date of May 2. See Rosemary Weaver, 30 IBLA 227 (1977), also involving payment sent from New York City to Cheyenne, Wyoming. Weaver holds that there is a lack of due diligence evinced in the circumstances.

I would affirm the decision below.

Frederick Fishman
Administrative Judge

